

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GEORGE HAMILTON,

Plaintiff,

v.

R .J. HERNANDEZ, Chief Deputy Warden, et al.,

Defendants.

No. C 02-5602 SBA (PR)

**ORDER OF DISMISSAL**

**BACKGROUND**

In an Order dated March 31, 2004, the Court outlined the procedural background of the instant case as follows:

Plaintiff George Hamilton filed a pro se civil rights action pursuant to 42 U.S.C. § 1983 on August 23, 2000. See Hamilton v. Hernandez, C 00-3030 SBA (PR). At the time, he was incarcerated at Salinas Valley State Prison (SVSP) in Soledad, California, but he was later transferred to the Substance Abuse Treatment Facility in Corcoran, California (SATF). On March 30, 2001, the Court dismissed Plaintiff's complaint with leave to amend. On April 27, 2001, the Court granted Plaintiff a 30-day extension of time to file the amended complaint. On July 10, 2001, the Court found that Plaintiff had stated cognizable supplemental claims against prison officials at SATF, including a claim that SATF officials were interfering with Plaintiff's efforts to prosecute his claims against the SVSP defendants. The Court decided to exercise jurisdiction over the SATF claims because they were closely related to Plaintiff's original claims against prison officials at SVSP. The Court ordered the SATF warden to respond to Plaintiff's denial of access claim and took under submission the question of whether Plaintiff should be granted an extension of time to amend his original complaint until SATF officials stopped impeding him from doing so.

Thereafter, Plaintiff complained of continuing interference by SATF officials with his access to the courts. The Court then granted Plaintiff an indefinite extension of time to file an amended complaint regarding his claims against SVSP defendants until the denial of access allegations could be resolved.

On November 13, 2002, the Court reconsidered its decision to exercise jurisdiction over Plaintiff's claims against the SATF defendants, because those claims had come to dominate the litigation. The Court severed the SVSP claims from action 00-3030 and ordered them filed in a new civil rights action, this one. Action 00-3030, which then consisted solely of claims claims [sic] against the SATF defendants, was transferred to the United States District Court for the Eastern District of California. The Court stayed this action on the following terms:

[This action is] STAYED and ADMINISTRATIVELY  
TERMINATED pending resolution of Plaintiff's SVSP-related  
denial of access to the courts claims in action 00-3030.

Alternatively, Plaintiff may request that the Court lift the stay whenever he is prepared to file an amended complaint reasserting his SVSP claims, that is, once he gains access to the legal materials he needs to prepare such a complaint. Plaintiff shall file quarterly reports (i.e., every three months) in the stayed action apprising the Court of the progress of the transferred action as far as his SVSP-related denial of access to the courts claims are concerned.

Action 00-3030, Third Order of Service & Order Severing Claims and Transferring Action to E. Dist. of Cal. at 5, ¶8 (filed in this action in Docket #1 behind complaint). The first quarterly report was due on February 13, 2003.

(Mar. 31, 2004 Order at 1-2. )

In an Order dated March 31, 2004, the Court issued an order to show cause why the case should not be dismissed for Plaintiff's failure to comply with the Court's Order to file quarterly status reports. The Court also denied without prejudice Plaintiff's pending motions regarding alleged constitutional violations at state prisons that are located in the Eastern District of California and admonished Plaintiff that "he must not press claims in this Court regarding alleged constitutional violations occurring in state prisons located in other judicial districts, or he may be designated a vexatious litigant and become subject to a prefiling order." (*Id.* at 5.)

On April 22, 2004, Plaintiff filed a response to the Court's order to show cause and began filing quarterly status reports.

In an Order dated February 2, 2007, the Court lifted the stay in the instant action entered in November, 2002, and directed the Clerk of the Court to reopen the file. The Court directed Plaintiff to file the requisite amended complaint and any supporting documentation no later than thirty days from the date of the Order. The Court stated that he should "allege all facts and claims, specifically addressing any facts relevant to his SVSP claims under 42 U.S.C. §1983." (Feb. 2, 2007 Order at 3.)

Thereafter, after being granted two extensions of time to do so, Plaintiff filed his amended complaint. The Court now reviews his amended complaint.

#### **STANDARD OF REVIEW**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary

1 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

2 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:  
3 (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the  
4 alleged violation was committed by a person acting under the color of State law. West v. Atkins,  
5 487 U.S. 42, 48 (1988). Pro se pleadings must be construed liberally. Balistreri v. Pacifica Police  
6 Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

## 7 DISCUSSION

8 First, the Court notes that the claims in Plaintiff's amended complaint mirrors some of the  
9 claims in his original complaint in Case no. C 00-3030 SBA (PR). However, a number of those  
10 claims were previously dismissed in the Court's March 30, 2001 Order Dismissing Complaint With  
11 Leave to Amend in Case no. C 00-3030 SBA (PR). Therefore, the Court will refer to its March 30,  
12 2001 Order when reviewing his claims, beginning with this brief background:

13 Plaintiff alleges a series of incidents in which SVSP correctional officers  
14 interfered with his right to practice his religion, or harassed or retaliated against him  
15 based on his religious practices or based on complaints, grievances, or legal actions  
16 he filed against prison authorities. Plaintiff is a member of the House of Yahweh  
17 (HOY), a religious denomination headquartered in Texas, which relies on the first  
18 five books of the Old Testament as its primary religious text. HOY members are  
19 expected to comply with "Yahweh's 613 Laws," which have been derived from  
20 rules set forth in those Biblical books. SVSP has recognized HOY as an approved  
21 inmate religious activity group, and has set forth procedures to permit HOY  
22 members incarcerated at SVSP to gather for Sabbath Services on Saturdays, has  
23 designated Chaplain Bethancourt to coordinate and schedule HOY activities, and  
24 has recognized Allen B. Williams, who is currently Plaintiff's cell mate, as an  
25 inmate minister for the HOY group. In addition to his participation in this religious  
26 group, Plaintiff's role in circulating an inmate petition and presenting it to Governor  
27 Gray Davis and members of the state legislature allegedly caused Defendants to  
28 retaliate against him.

(Mar. 30, 2001 Order in Case no. C 00-3030 SBA (PR) at 4.)

### 22 **I. Plaintiff's Claims**

#### 23 **A. Plaintiff's Insistence on Cell Mate Who Observes Yahweh's 613 Laws**

##### 24 **1. Summary of Allegations**

25 The following summary is taken from the Court's March 30, 2001 Order in Case no.  
26 C 00-3030 SBA (PR):

27 From April to November 2000, Plaintiff was embroiled in an ongoing  
28 conflict with prison authorities who were attempting to place him in a double cell

1 with another inmate. Correctional officers repeatedly asked Plaintiff to identify a  
2 compatible inmate with whom he could share a cell, and Plaintiff consistently stated  
3 that his cell mate (1) must be a Crip, (2) must be willing to use an upper bunk,  
4 because Plaintiff had a medical "chrono" indicating he should be assigned to a  
5 lower bunk; and (3) must be willing to comply with Yahweh's 613 Laws. Those  
6 laws included the requirements that the inmate (a) never refer to "God," "Lord," or  
7 "Lord God," because those terms glorify Satan; (b) possess no holiday or birthday  
8 cards, because those items glorify Satan; and (c) observe the Sabbath (Saturday) by  
9 refraining from working, exercising, listening to the radio, or watching television  
10 on that day. He claimed conflict would inevitably result if he were housed with an  
11 inmate who violated these laws. Plaintiff alleges that when he explained the  
12 religious basis for his refusal to accept certain inmates as cell mates, Defendants  
13 dismissed his religious concerns and threatened to discipline him if he did not  
14 accept an inmate who was otherwise compatible. Defendants often spoke to  
15 Plaintiff disrespectfully, frequently using profanity.

9 On May 1, 2000, Plaintiff was issued a Rules Violation Report (RVR), Log  
10 No. ASFD-00-04-140, for willfully obstructing a peace officer, based on his  
11 "refusal to accept a cell mate." This disciplinary action was ultimately dismissed  
12 because the complaining officer had left the institution by the time of the hearing.  
13 Plaintiff alleges that his due process rights were violated at the hearing, because he  
14 was not provided with a staff assistant.

13 On May 16, 2000, Plaintiff was issued another RVR, Log No. ASFD-00-05-  
14 012, for willfully obstructing a peace officer, again based on a conversation he had  
15 with a correctional officer in which he said he would only accept a cell mate who  
16 agreed to abide by Yahweh's 613 Laws. Plaintiff was found guilty of this rule  
17 violation and lost 90 days of credits against his sentence. Plaintiff alleges that his  
18 due process rights were violated at the hearing because he was not provided with a  
19 staff assistant. He also alleges that Defendant Ponder, who conducted the hearing,  
20 told him at the outset that he should not bother appealing the discipline he was  
21 about to receive, because Defendant Tynes was the Chief Disciplinary Officer, and  
22 pronounced him guilty before he even asked Plaintiff how he pled to the charges.

18 On June 8, 2000, Defendant Hernandez told Plaintiff he would be released  
19 from administrative segregation to be housed in Facility C, where he would be  
20 placed in a double cell. He warned Plaintiff that he would receive another RVR if  
21 he refused to accept a compatible cell mate. When Plaintiff was released from  
22 administrative segregation the next day, he was placed in a cell with an inmate who  
23 did not agree to abide by Yahweh's 613 Laws and who was already occupying the  
24 cell's lower bunk. After Plaintiff complained, he was placed in a single cell,  
25 apparently the same day.

23 On July 23, 2000, prison officials sent Allen B. Williams, the HOY  
24 minister, to Plaintiff's cell so the two inmates could determine if they were  
25 compatible cell mates. Both inmates said they did not want to be relocated to  
26 another section of the prison, which would require them to forfeit their job  
27 assignments, and both stated they did not want to use an upper bunk. Therefore,  
28 they took the position that they were not compatible cell mates.

26 On July 24, 2000, Plaintiff discovered another inmate in his cell when he  
27 returned from his job assignment. Upon inquiring, he discovered that the other  
28 inmate was a Blood affiliate, was not an observer of Yahweh's 613 Laws, and had  
never been asked about his religious practices before he was placed in Plaintiff's  
cell. Plaintiff alleges that when the other inmate learned Plaintiff was a member of

1 a rival gang, he immediately picked up his property and asked an officer to remove  
2 him from the cell. When Plaintiff asked Defendant Davis about the incident, Davis  
3 laughed, claimed it was a mistake, and warned Plaintiff he would be issued another  
RVR and would be placed on "C status" (with restricted privileges) if he refused to  
identify a compatible cell mate.

4 On July 26, 2000, Defendant Hernandez told Plaintiff that prison officials  
5 were "fed up" with Plaintiff's complaints, and warned him that he would be issued  
6 another RVR and would be placed on C status if he refused to accept a compatible  
7 cell mate. At a classification hearing on the same date, Defendant Hedgpeth and  
8 another officer told Plaintiff he was going to be transferred because he was a  
"program failure" and he had filed multiple complaints. He was also told once  
again that he would be issued another RVR and would be placed on C status if he  
refused a compatible cell mate.

9 On July 31, 2000, Plaintiff was issued another RVR, Log No. C-00-07-  
0071, for refusing a compatible cell mate, based on his comments to Correctional  
10 Officer Negrette that his cell mate must agree to comply with Yahweh's 613 Laws.  
Apparently at the time Plaintiff filed his complaint on August 23, 2000, the hearing  
11 on this RVR had not yet taken place. Although Plaintiff has filed several additional  
12 documents describing events that have taken place since he filed his complaint, he  
has not informed the Court that any discipline resulted from this RVR.

13 On November 30, 2000, Mr. Williams moved into Plaintiff's cell. They  
14 remain cell mates.

(Mar. 30, 2001 Order in Case no. C 00-3030 SBA (PR) at 2-5.)

## 15 **2. Placement in Cell with Allegedly Incompatible Cell Mates**

16 In his amended complaint, Plaintiff alleges the many of the same claims as in his original  
17 complaint in Case no. C 00-3030 SBA (PR) relating to his insistence on a cell mate who observes  
18 Yahweh's 613 Laws. The Court notes that in its March 30, 2001 Order in Case no. C 00-3030 SBA  
19 (PR), some of these claims were dismissed without leave to amend. Therefore, the Court will only  
20 address the related claim that was dismissed with leave to amend, which was his claim regarding  
21 Plaintiff's placement in cell with allegedly incompatible cell mates.

22 The following summary is taken from the Court's March 30, 2001 Order in Case no.  
23 C 00-3030 SBA (PR):

24 Plaintiff alleges that he twice was placed in a cell with an inmate who did  
25 not agree to follow Yahweh's 613 Laws, and in one case he was placed in a cell  
26 with a member of a rival gang. Plaintiff alleges that these incidents demonstrated  
deliberate indifference to his personal safety, because conflict was likely to develop  
27 between him and those cell mates when Plaintiff insisted that the cell mates comply  
with Yahweh's 613 Laws. He alleges that prison officials routinely ignored  
28 conflicts between cell mates until they erupted into physical altercations, and thus  
alleges that housing him with incompatible cell mates necessarily placed him in  
physical danger in violation of the Eighth Amendment. See Farmer v. Brennan,

1 511 U.S. 825, 832-33 (1994) (holding that Eighth Amendment requires prison  
2 officials take reasonable measures to protect prisoners' safety, including measures  
to protect prisoners from violence at the hands of other prisoners).

3 (Mar. 30, 2001 Order in Case no. C 00-3030 SBA (PR) at 7.)

4 In its March 30, 2001 Order in Case no. C 00-3030 SBA (PR), the Court dismissed this claim  
5 with leave to amend, stating:

6 Even accepting Plaintiff's allegation that Defendants' permanent or long-  
7 term placement in cells with these inmates would have demonstrated deliberate  
indifference to his physical safety, the Court concludes that Plaintiff has not alleged  
8 cognizable claims in his complaint, because he alleges that he was promptly  
removed from the cells when he reported to prison guards that the inmates were not  
9 compatible cell mates. He does not allege facts that would have led prison guards  
to expect that physical conflict would immediately ensue if Plaintiff were housed  
10 with these inmates. Although one of the inmates was a member of a rival gang, that  
inmate reportedly immediately requested release from the cell when he learned of  
11 Plaintiff's gang affiliation.

12 As part of an ongoing course of conduct, these incidents might amount to  
retaliatory threats or harassment, a question addressed in the next section, but  
13 standing alone they cannot support a claim for violation of Plaintiff's constitutional  
rights. Therefore, Plaintiff's claims based solely on Defendants' placing him in cells  
14 with incompatible cell mates are DISMISSED. If Plaintiff can in good faith allege  
additional facts demonstrating that he was placed in imminent danger to his  
15 physical safety during these incidents, he may reassert the claims in an amended  
complaint.

16 (Id. at 7-8.)

17 In his amended complaint, Plaintiff fails to show that he was placed in imminent danger to  
18 his physical safety during the incidents of being placed in cells with incompatible cell mates. For  
19 example, he includes facts regarding the June 9, 2000 incident where he was assigned a cell mate  
20 who "did not practice the House of Yahweh, or any other religion" and occupied the lower bunk.  
21 (Am. Compl. at 17.) Plaintiff then "informed the floor-staffs [sic]" of his problems with his cell  
22 mate, and after waiting for "several hour(s)," he was relocated to another cell. As to the July 24,  
23 2000 incident where he was allegedly placed in the same cell as a rival gang member, Plaintiff  
24 claims that he and that cell mate discovered immediately that they were members of rival gang and  
25 alerted prison officials. It can be inferred that Plaintiff was never placed in imminent danger  
26 because they were separated almost immediately. The inmate had alerted prison staff once he  
27 discovered the conflict, and he did not even bother to unpack his property. That inmate was then  
28



able to quickly relocate once he was moved from Plaintiff's cell. (*Id.* at 19.) Therefore, the Court finds that Plaintiff has failed to correct the deficiencies of his claims based solely on Defendants' placing him in cells with incompatible cell mates. Accordingly, his claims are DISMISSED with prejudice and without further leave to amend.

**B. Alleged Interference with Religious Services and Practices**

**1. Summary of Allegations**

The following summary is taken from the Court's March 30, 2001 Order in Case no. C 00-3030 SBA (PR):

Plaintiff has filed five declarations by Mr. Williams describing allegedly unconstitutional conduct directed against HOY members at SVSP, which has taken place since the complaint was filed. The Court considers the facts set forth in these declarations as if they were the allegations of a proposed supplemental complaint.<sup>1</sup>

On certain occasions in May and June 2000, prison officials refused to release Plaintiff from his cell for Sabbath services, despite the fact that the procedures for releasing HOY members for services were set forth in an official prison memorandum authorized by Defendant Hedgpeth, that Plaintiff was listed as an HOY member in that memorandum, and that the memorandum was distributed by Mr. Williams to all necessary officers on the morning of the services.

In a memorandum dated December 22, 2000, Defendant Hedgpeth authorized Plaintiff to act as a minister's assistant, which permitted Plaintiff to help Mr. Williams pick up and post sign-up lists and release memoranda for Sabbath services, and distribute religious literature. On January 26, 2001, however, Hedgpeth revoked this authorization, revoked another inmate's authorization to act as a minister's assistant, and restricted the HOY group to 45 minutes of chapel use time for Sabbath services. Mr. Williams alleges that these acts were taken in retaliation for (1) Mr. Williams' filing a declaration in this action on December 12, 2000; (2) Plaintiff's requests to local law enforcement agencies and to this Court seeking the arrest of certain SVSP correctional officers; and (3) Plaintiff's request to Defendant Hedgpeth that he place Correctional Officer Beltran under arrest.

On February 13, 2001, Mr. Williams filed a complaint against Chaplain Bethancourt based on his failure to assist the HOY group in obtaining religious literature and audio and video tapes from the HOY headquarters. Despite repeated requests, the chaplain had taken no action to obtain the materials.

On February 25, 2001, Mr. Williams filed a complaint against Sgt. Davis, based on a February 25, 2001 incident in the program office. Mr. Williams was using a typewriter in the office with Capt. Hedgpeth's permission, and had typed the heading "Attributes of YAHWEH" at the top of a piece of paper. He was preparing

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<sup>1</sup> The Court notes that Plaintiff filed an "Application to Join Declaration of Allen B. Williams in Support of Civil Complaint and Motions for Injunctive Relief" on December 19, 2000, the same date Mr. Williams' first declaration was filed, and both Plaintiff and Mr. Williams signed Mr. Williams' last two declarations, which were both filed on March 29, 2001.

1 a document for use during Sabbath services. Sgt. Davis told Mr. Williams he was  
2 not authorized to use the typewriter to type religious tracts and ordered him out of  
3 the office. Sgt. Davis also told Mr. Williams he had to make any photocopies at the  
4 law library. In a memorandum dated March 9, 2001, Hedgpeth declared that, as of  
5 March 12, 2001, Mr. Williams was denied access to the program office to conduct  
6 clerical duties.

7 In his February 26, 2001 declaration, Mr. Williams states that both he and  
8 Plaintiff have been denied release to attend Sabbath services on numerous  
9 occasions, which results in cancellation of the services because Mr. Williams is the  
10 minister who conducts the services. He states that Defendants Hernandez,  
11 Negrette, Cerda and Hoover are among those responsible, but he does not identify  
12 specific wrongful acts by any of these Defendants.

13 On March 3, 2000, Plaintiff and Mr. Williams were released from their cells  
14 to attend Sabbath services, but the security gate officer would not release them from  
15 their yard because he did not have the release memorandum that Mr. Williams had  
16 distributed to the tower office that morning. Mr. Williams found the memorandum  
17 crumpled up into a ball and partially hidden among some boxes. When he  
18 presented it to the tower officer, he and Plaintiff were released. When they arrived  
19 at the chapel, however, they found the entrance door was still locked. When  
20 Mr. Williams asked an officer to unlock the door, he was told the officer who had  
21 the key was on an errand. The inmates who came to attend Sabbath services were  
22 forced to stand in the cold and in a light rain for 10 to 15 minutes until the door was  
23 unlocked. Sgt. Davis told the officer who unlocked the door that he should only let  
24 Plaintiff and Mr. Williams enter the chapel and should make the other inmates wait  
25 outside. Mr. Williams apparently convinced the officer to let everyone in.

26 Once the service got underway, Sgt. Davis called Mr. Williams into his  
27 office and asked to see the approved roster for that day's services. Mr. Williams  
28 explained that the memorandum had been distributed to the housing buildings, and  
that Captain Hedgpeth had approved attendance by more than 25 inmates.  
Sgt. Davis insisted that "we in custody run the show." When Mr. Williams  
explained that he did not want to engage in an argument on the Sabbath, Sgt. Davis  
ordered him to sit down and listen, or he would be handcuffed and returned to his  
cell. When Mr. Williams again said he did not want to engage in an argument on  
the Sabbath, Mr. Williams was handcuffed and placed in a holding cage. He  
apparently was released later that day. Mr. Williams states that Sgt. Davis has been  
involved in previous acts of harassment, including the "loss" of Mr. Williams'  
property when he was placed in administrative segregation on August 3, 2000; the  
denial of library access; and the denial of program privileges on C yard.

29 In his February 26, 2001 declaration, Mr. Williams states that prison guards  
30 have repeatedly failed to provide Plaintiff and him with meals that conform to the  
31 dietary requirements of their religious faith. Even though they have filed  
32 Inmate/Parolee Appeal Forms ("602 appeals") on this matter that have been  
33 resolved in their favor, the appeals decisions are not honored by the correctional  
34 officers who provide the meals.

(Mar. 30, 2001 Order in Case no. C 00-3030 SBA (PR) at 9-12 (footnote in original).)

## 35 **2. Related Claims**

36 The Court will only address the related claims that were dismissed with leave to amend,



which were his claims relating to: (a) interference with HOY Sabbath Services; (b) denial of access to the program office and similar privileges; and (c) religious dietary requirements.

(a) **Interference with HOY Sabbath Services**

The following legal standard is taken from the Court's March 30, 2001 Order in Case no. C 00-3030 SBA (PR):

In order to establish a free exercise violation, a prisoner must show the defendants burdened the practice of his religion, by preventing him from engaging in conduct mandated by his faith, without any justification reasonably related to legitimate penological interests. See Freeman v. Arpaio, 125 F.3d 732, 736 (9th Cir. 1997). To reach the level of a constitutional violation, "the interference with one's practice of religion 'must be more than an inconvenience; the burden must be substantial and an interference with a tenet or belief that is central to religious doctrine.'" Id. at 737 (quoting Graham v. C.I.R., 822 F.2d 844, 851 (9th Cir. 1987)).

Inmates of the same religious faith have no absolute right to gather for religious services. Such services may be banned if the prison has a legitimate penological interest in doing so. See Anderson v. Angelone, 123 F.3d 1197, 1198 (9th Cir. 1997) (upholding regulation prohibiting inmate-led religious activities where state contended that the regulation addressed legitimate security concerns that inmate-led religious services could be a cover for unlawful activity and that an inmate leading religious services could inflame or unduly influence other prisoners); McCabe v. Arave, 827 F.2d 634, 637 (9th Cir. 1987) (prison regulation prohibiting Church Jesus Christ Christian inmates from group worship and group study reasonably related to legitimate penological needs).

The Equal Protection Clause requires that an inmate who is an adherent of a minority religion be afforded a "reasonable opportunity of pursuing his faith comparable to the opportunity afforded fellow prisoners who adhere to the conventional religious precepts," Cruz v. Beto, 405 U.S. 319, 322 (1972) (Buddhist prisoners must be given opportunity to pursue faith comparable to that given Christian prisoners); Freeman, 125 F.3d at 737, as long as the inmate's religious needs are balanced against the reasonable penological goals of the prison, see O'Lone v. Estate of Shabazz, 482 U.S. 342, 349 (1987); Allen v. Toombs, 827 F.2d 563, 568-69 (9th Cir. 1987) (finding no Equal Protection violation where providing equal access to religious services for Native American inmates involved exposing high-risk inmates to hot coals, an axe and a pitchfork). Nevertheless, it does not follow that a prison must duplicate every religious benefit it provides so that all religions are treated exactly the same. See Cruz, 405 U.S. at 322 & n.2; Freeman, 125 F.3d at 737; Allen, 827 F.2d at 568.

(Mar. 30, 2001 Order in Case no. C 00-3030 SBA (PR) at 12-13.)

Also in its March 30, 2001 Order in Case no. C 00-3030 SBA (PR), the Court analyzed Plaintiff's claims as follows:

Plaintiff alleges several incidents of interference with HOY Sabbath services, for which there appear to be no legitimate penological justifications. Such incidents include the prison's alleged repeated failures to release Plaintiff and

1 Mr. Williams from their cells or prison buildings for services, and the March 3,  
2 2001 incident in which Sgt. Davis removed Mr. Williams from the chapel, which  
3 resulted in the cancellation of services that day. The revocation of Plaintiff's  
4 designation as a minister's assistant may also constitute interference, if  
5 Mr. Williams needed Plaintiff's assistance to distribute and post the memoranda that  
6 permitted inmates to attend services. Finally, the restriction of the services to 45  
7 minutes may constitute infringement of free exercise rights if services cannot  
8 reasonably be conducted in that time period and the prison had no legitimate  
9 penological interest in restricting chapel access. Plaintiff may assert these claims in  
10 an amended complaint, but he must first exhaust his administrative remedies by  
11 filing prison grievances challenging each alleged act of interference. See 42 U.S.C.  
12 § 1997e(a).

13 The allegations of restrictions on Plaintiff's ability to attend HOY services  
14 may also support an Equal Protection claim. If Plaintiff can in good faith allege  
15 that prison officials treated HOY members differently from inmates of other  
16 religions, and had no legitimate penological purpose in doing so, he may assert an  
17 Equal Protection claim in an amended complaint. Plaintiff should identify other  
18 religious groups that are granted favorable treatment and identify the privileges that  
19 are granted on an unequal basis. Moreover, Plaintiff must first exhaust his  
20 administrative remedies on this issue by filing prison grievances challenging each  
21 alleged act of disparate treatment.

22 (Id. at 13.)

23 In his amended complaint, Plaintiff again alleges similar instances of interference with HOY  
24 Sabbath Services. In its March 30, 2001 Order in Case no. C 00-3030 SBA (PR), the Court directed  
25 him to show that there was no legitimate penological justification for the Defendants' interfering  
26 with HOY Sabbath Services. Plaintiff has not done so. Even after being given an opportunity to  
27 amend his claims, he has also failed to support his claims with specific dates during which the  
28 alleged violations took place. He also makes conclusory allegations, such as Defendants  
"[c]orruptly engaged in a pattern of schemes to disrupt the Sabbath Services." (Am. Compl. at 26.)  
Sweeping conclusory allegations will not suffice; Plaintiff must instead "set forth specific facts as to  
each individual [D]efendant's" deprivation of protected rights. See Leer v. Murphy, 844 F.2d 628,  
633 (9th Cir. 1988). Plaintiff also claims that Defendants "corruptly limited chapel time," but he  
does not explain how any alleged restriction of the services constituted infringement of his free  
exercise rights because he fails to amend his claim to allege that the prison had no legitimate  
penological interest in restricting chapel access. Plaintiff also fails to show that he exhausted his  
administrative remedies by filing prison grievances challenging each alleged act of interference.

As to his Equal Protection claim, Plaintiff has also failed to identify other religious groups

that are granted favorable treatment or to identify the privileges that are granted on an unequal basis. Again, he fails to show that he exhausted his administrative remedies by filing prison grievances challenging each alleged act of disparate treatment.

Therefore, the Court finds that Plaintiff has failed to correct the deficiencies of his claims relating to Defendants' interference with HOY Sabbath Services. Accordingly, his claims are DISMISSED with prejudice and without further leave to amend.

**(b) Denial of Access to Program Office and Similar Privileges**

In its March 30, 2001 Order in Case no. C 00-3030 SBA (PR), the Court analyzed Plaintiff's claims as follows:

The allegations that HOY members were denied certain privileges -- e.g., restrictions on Mr. Williams' use of the program office; revocation of Plaintiff's and another inmate status as minister's assistants; and Chaplain Bethancourt's failure to assist HOY members in obtaining religious tapes and literature -- may support a Equal Protection claim if Plaintiff can in good faith allege that other inmates of other religious faiths received substantially greater privileges, and that there was no legitimate penological justification for the disparate treatment. These allegations will support a Free Exercise claim only if Plaintiff can in good faith allege that the denial of privileges substantially burdened or interfered with a central practice of the HOY faith, without any legitimate penological justification. Plaintiff may assert these claims in an amended complaint only if he was personally and concretely injured by the alleged unconstitutional conduct, see Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992), and he must exhaust his administrative remedies before presenting the claims in federal court.

(Mar. 30, 2001 Order in Case no. C 00-3030 SBA (PR) at 13-14.)

In his amended complaint, Plaintiff again raises similar claims relating to the denial of access to the program office and other similar privileges, such as Defendants' "refus[al] to purchase and order religious material published by The House of Yahweh." (Am. Compl. at 26.) However, Plaintiff does not allege that other inmates of other religious faiths received substantially greater privileges, and that there was no legitimate penological justification for the disparate treatment. While he again alleges that Defendants "corruptly limited chapel time," and "corruptly limited the number of inmates who desired to attend chapel services, to no more than 25 inmates," (*id.*), Plaintiff fails to allege that the denial of privileges substantially burdened or interfered with a central practice of the HOY faith, without any legitimate penological justification. Furthermore, he fails to claim that he exhausted his administrative remedies before presenting the claims in federal court. Thus, he

1 fails to correct the deficiencies of his claims relating to the denial of access to the program office and  
 2 similar privileges. Accordingly, his claims are DISMISSED with prejudice and without further  
 3 leave to amend.

4 (c) **Religious Dietary Requirements**

5 In its March 30, 2001 Order in Case no. C 00-3030 SBA (PR), the Court analyzed Plaintiff's  
 6 claim as follows:

7 Inmates "have the right to be provided with food sufficient to sustain them  
 8 in good health that satisfies the dietary laws of their religion." McElyea v. Babbitt,  
 9 833 F.2d 196, 198 (9th Cir. 1987). Allegations that prison officials refuse to  
 10 provide a healthy diet conforming to sincere religious beliefs states a cognizable  
 11 claim under § 1983 of denial of the right to exercise religious practices and beliefs.  
 12 See id. The burden then falls on the prison officials to prove that the burden on  
 13 plaintiff's exercise of religion was reasonably related to a legitimate penological  
 14 objective. See Ashelman v. Wawrzaszek, 111 F.3d 674, 677-78 (9th Cir. 1997).

15 Plaintiff alleges that prison officials have repeatedly failed to provide meals  
 16 that conform to their religious dietary requirements, but he does not allege that he  
 17 was denied a healthy diet conforming to those requirements. For example,  
 18 Mr. Williams' February 26, 2001 declaration specifies that, as a result of a 602  
 19 appeal, HOY inmates were authorized to receive peanut butter packs, yet the prison  
 20 guards have refused to honor this authorization. Plaintiff, however, fails to allege  
 21 that in the absence of the peanut butter packs his meals did not provide him with a  
 22 healthy diet that conformed to his religious dietary requirements. Plaintiff may  
 23 assert a claim that prison officials have not provided a healthy diet conforming to  
 24 HOY religious dietary requirements only if he can make the necessary allegations  
 25 in good faith, and can demonstrate that he has exhausted his administrative  
 26 remedies with respect to the alleged violations.

27 (Mar. 30, 2001 Order in Case no. C 00-3030 SBA (PR) at 14.)

28 In his amended complaint, Plaintiff claims that Defendants "corruptly refused to honor . . .  
 CDC-602(s) for all House of Yahweh members to be provided [meat substitutes] despite having  
 first-hand knowledge that CDCR provided [meats] not in scriptural compliance with Yahweh's  
 dietary laws." (Am. Compl. at 26.) While Plaintiff alleges that he was not provided with "meat  
 substitutes," he fails to assert that prison officials did not provided a healthy diet conforming to  
 HOY religious dietary requirements. Plaintiff merely claims that he "was not eating food portions,  
 that could sustain him in proper health, as [he] attempted to comply with Yahweh's dietary laws, by  
 not consuming defiled meat items . . . ." (Id. at 27.) He also fails to demonstrate in his amended  
 complaint that he has exhausted his administrative remedies with respect to the alleged violations.  
 Thus, he fails to correct the deficiencies of his claims relating to Defendants' failure to conform to

his religious dietary requirements. Accordingly, his claims are DISMISSED with prejudice and without further leave to amend.

**C. Alleged Retaliation for Legal Activity**

**1. Summary of Allegations**

The following summary is taken from the Court's March 30, 2001 Order in Case no. C 00-3030 SBA (PR):

Plaintiff alleges that, at a May 11, 2000 classification hearing, Defendant Tynes threatened to transfer Plaintiff to an institution far from his family and friends in retaliation for his legal activity, specifically the class action petition Plaintiff circulated and sent to Governor Gray Davis and members of the state legislature. At a July 26, 2000 classification hearing, Defendant Hedgpeth and another officer told Plaintiff he was going to be transferred because he was a "program failure" and he had filed multiple complaints. At a February 10, 2001 classification hearing, prison officials apparently announced firm plans to transfer Plaintiff to High Desert or Pelican Bay State Prison, in far northern California, far from his family and social ties in Fresno, California. On April 3, 2001, Mr. Williams filed a declaration reporting that Plaintiff had been transferred on March 29, 2001 to California State Prison, Corcoran, in the Central Valley. Although Plaintiff has not been transferred to a prison remote from his social network, Mr. Williams nevertheless contends the transfer was retaliatory.

On December 28, 2000, Officer Beltran allegedly threatened Plaintiff while escorting him to the prison law library, stating, "I could have your stupid-ass shot." Mr. Williams states in his February 26, 2001 declaration that Correctional Officer Beltran has prevented Plaintiff and Mr. Williams from entering the law library in soft-sole tennis shoes until they have produced proof that they were authorized to wear such shoes. He claims this interfered with their ability to use the law library, by cutting into their limited time in the library, and constituted harassment.

In the February 26, 2000 declaration, Mr. Williams states that Correctional Officer Farias has repeatedly failed to release Plaintiff on time for his job assignment and sometimes fails to release him at all, even though other inmates are timely released. Further, during modified program, Plaintiff is excluded from the list of critical culinary workers. Mr. Williams asserts this disparate treatment is racially motivated.

Mr. Williams states that correctional officers have ordered inmates to "lock up in their cells" when they have observed Plaintiff talking to "the tier tenders," because they suspect that Plaintiff is engaging in legal discussions, and he alleges that Plaintiff's legal mail has been opened outside Plaintiff's presence on numerous occasions.

(Mar. 30, 2001 Order in Case no. C 00-3030 SBA (PR) at 15-16.)

**2. Related Claims**

The Court will only address the related claims that were dismissed with leave to amend,



1 which were his claims relating to: (a) retaliatory transfer; (b) verbal threats of violence; and (c) other  
2 allegations.

3 (a) **Retaliatory Transfer**

4 In its March 30, 2001 Order in Case no. C 00-3030 SBA (PR), the Court analyzed Plaintiff's  
5 claim as follows:

6 Retaliation by a state actor for the exercise of a constitutional right is  
7 actionable under 42 U.S.C. § 1983, even if the act, when taken for different reasons,  
8 would have been proper. See Mt. Healthy City Bd. of Educ. v. Doyle, 429 U.S.  
9 274, 283-84 (1977). Plaintiff alleges that prison officials three times expressly  
10 threatened to transfer him to a prison far removed from his family and friends in  
11 retaliation for activity protected by the First Amendment in May and June 2000 and  
12 again in February 2001. Mr. Williams, however, just informed the Court that  
13 Plaintiff was transferred on March 29, 2001 to a prison in the Central Valley, close  
14 to his family and friends. Mr. Williams continues to claim that the transfer was  
15 retaliatory, but he does not explain how it affected Plaintiff adversely. Plaintiff  
16 may assert a claim for retaliatory transfer in an amended complaint only if he can  
17 provide such an explanation, and only after he has exhausted his administrative  
18 remedies with respect to the transfer.

19 (Id. at 16.)

20 In his amended complaint, Plaintiff again claims that on March 29, 2001, he was transferred  
21 to the California Substance Abuse Treatment Facility (SATF) in Corcoran, California. However, as  
22 mentioned above, Plaintiff's transfer brought him closer to his family and friends. Plaintiff was  
23 directed to explain how the transfer affected him adversely in order to show that it was a retaliatory  
24 transfer. Plaintiff does not do so in his amended complaint. He has also failed to show that he has  
25 exhausted his administrative remedies with respect to the transfer. Instead, Plaintiff claims that  
26 during his incarceration at SATF from March 29, 2001 through January 8, 2003, SATF prison staff  
27 "in bad faith, seized, withheld and possessed all filed . . . documents concerning this litigation,  
28 which obstructed [his] ability to comply with this Court's orders and prosecute this civil action."  
(Am. Compl. at 27.) However, such allegations of denial of meaningful access to the Courts is not  
proper in an amended complaint. Instead, Plaintiff must pursue such claims in a new action filed in  
the United States District Court for the Eastern District of California because the alleged violations  
giving rise to his claim occurred at SATF, which is located in the Eastern District.

Plaintiff fails to correct the deficiencies of his claims for retaliatory transfer. Accordingly,  
his claim is DISMISSED with prejudice and without further leave to amend.

(b) **Verbal Threat of Violence**

In its March 30, 2001 Order in Case no. C 00-3030 SBA (PR), the Court analyzed Plaintiff's claim as follows:

A death threat made when the party has both the opportunity to carry out the threat and evidences the intent to do so does state a cognizable claim. See Burton v. Livingston, 791 F.2d 97, 100-01 (8th Cir. 1986) (drawing gun and terrorizing prisoner with threats of death while using racially offensive language presents cognizable claim). Plaintiff alleges that Officer Beltran told him, "I could have your stupid-ass shot." He does not, however, allege sufficient circumstantial facts to establish that Officer Beltran had both the opportunity to carry out the threat and the intent to do so. Plaintiff may assert a retaliation claim based on this incident alone only if he can in good faith allege sufficient supporting facts. If he plans to assert such a claim in an amended complaint, he must first exhaust any administrative remedies available to him.

(Mar. 30, 2001 Order in Case no. C 00-3030 SBA (PR) at 16.)

Plaintiff fails to amend this claim in his amended complaint. In fact, he no longer names Officer Beltran as a Defendant in this action. Therefore, his retaliation claim based on this incident alone is DISMISSED with prejudice and without further leave to amend.

(c) **Other Allegations**

In its March 30, 2001 Order in Case no. C 00-3030 SBA (PR), the Court analyzed Plaintiff's other allegations as follows:

Plaintiff's other allegations are insufficient to state claims for retaliation. The allegation that Officer Beltran ordered Plaintiff to produce proof that he was authorized to wear soft sole shoes before he was permitted to enter the law library, apparently on a single occasion, is at worst a de minimis infringement of Plaintiff's constitutional rights. See Hernandez v. Denton, 861 F.2d 1421, 1424 (9th Cir. 1988) (holding that federal courts should avoid interfering in prison administration whenever prisoners are inconvenienced or suffer de minimis injuries), vacated on other grounds and remanded, 493 U.S. 801 (1989), modified on remand, 919 F.2d 573 (9th Cir.1990), vacated on other grounds and remanded, 504 U.S. 25, remanded on remand, 966 F.2d 533 (9th Cir.1992). Moreover, the facts as alleged do not even raise an inference that Officer Beltran acted with an unconstitutional motive on this occasion. Plaintiff may assert this claim in an amended complaint only if he can in good faith allege that Officer Beltran treated Mr. Williams and him differently from other inmates in circumstances that suggest Officer Beltran acted with an unconstitutional motive, and that this treatment caused Plaintiff harm. Further, Plaintiff must exhaust his administrative remedies before returning to federal court with this claim.

Plaintiff's allegation that correctional officers intentionally interfere with his conversations with "tier tenders" lacks sufficient factual detail to state a cognizable claim. Plaintiff alleges that the officers suspect that he is engaged in conversations about legal matters. If Plaintiff is not, in fact, engaged in such conversations, the interference amounts to mere harassment, which does not arise to the level of a

1 constitutional violation.<sup>2</sup> If the interference in fact impedes Plaintiff from  
 2 exercising his First Amendment rights, because it prevents Plaintiff from engaging  
 3 in discussion necessary to the exercise of those rights, Plaintiff may have a claim if  
 4 he can also show the interference caused him injury by effectively preventing him  
 5 from presenting certain claims to the courts. See Sands v. Lewis, 886 F.2d 1166,  
 6 1171 (9th Cir. 1989) (holding that plaintiffs must allege an "actual injury" to court  
 7 access, consisting of some specific "instance in which an inmate was actually  
 8 denied access to the courts," to state a claim for infringement of the right to petition  
 9 the government for redress of grievances). Similarly, Plaintiff's allegation that  
 10 prison officials open his legal mail outside his presence is insufficient to state a  
 11 cognizable claim, absent allegations that this conduct had an unconstitutional  
 12 chilling effect on his exercise of First Amendment rights. See note 2, supra.  
 13 Plaintiff may assert these claim in an amended complaint if he can make sufficient  
 14 supporting allegations in good faith and can demonstrate that he has exhausted his  
 15 administrative remedies on the claims.

16 Finally, Plaintiff alleges that Officer Farias refused to release Plaintiff for  
 17 his job assignment when other inmates were released and that Plaintiff was  
 18 excluded from the list of critical culinary workers. Although the allegation is  
 19 included among allegations of retaliation for Plaintiff's First Amendment activities,  
 20 Mr. Williams asserts the disparate treatment was racially motivated. If Plaintiff  
 21 alleges invidious racial discrimination, his claim will be cognizable under the Equal  
 22 Protection clause. See Wolff v. McDonnell, 418 U.S. 539, 556 (1974) ("Prisoners  
 23 are protected under the Equal Protection Clause of the Fourteenth Amendment from  
 24 invidious discrimination based on race."). If Plaintiff alleges that Officer Farias  
 25 discriminated against him in retaliation for his exercise of First Amendment rights,  
 26 Plaintiff must allege a chilling effect or direct injury resulting from the disparate  
 27 treatment. Plaintiff must exhaust his administrative remedies before presenting  
 28 either claim in an amended complaint.

(Mar. 30, 2001 Order in Case no. C 00-3030 SBA (PR) at 16-18 (footnote in original).)

As mentioned above, Plaintiff fails to name Officer Beltran as a Defendant in his amended complaint; therefore, Plaintiff's retaliatory claim relating to Officer Beltran is DISMISSED with prejudice and without further leave to amend.

As to his allegations regarding Defendants' intentionally interfering with his conversations with "tier tenders," Plaintiff has failed to include sufficient factual detail to state a cognizable retaliation claim in his amended complaint. Similarly, he fails to amend his allegation that Defendants opened his legal mail outside his presence by claiming that this conduct had an unconstitutional effect on his exercise of his First Amendment rights. Plaintiff also fails to

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<sup>2</sup> The claim cannot be sustained on the basis that the officers' interference with Plaintiff's conversations had a chilling effect of Plaintiff's exercise of his First Amendment rights, because "an unconstitutional chill will only exist if the government action has injured the individual or places the individual in immediate danger of sustaining a direct injury." O'Keefe v. Van Boening, 82 F.3d 322, 325 (1996).

1 demonstrate that he has exhausted his administrative remedies on these claims. Accordingly, these  
2 claims are DISMISSED with prejudice and without further leave to amend.

3 Finally, Plaintiff fails to name Officer Farias in his amended complaint; therefore, Plaintiff's  
4 retaliatory claim relating to Officer Farias discriminating against him for his exercise of his First  
5 Amendment rights is DISMISSED with prejudice and without further leave to amend.

6 **D. Other Claims in Amended Complaint**

7 Plaintiff attempts to raised new claims against new Defendants in his amended complaint;  
8 however, in its March 30, 2001 Order, the Court limited Plaintiff by only giving him leave to amend  
9 the above-referenced claims stating: "The amended complaint may not include any additional parties  
10 or claims not allowed in this Order without further leave of Court." (Mar. 30, 2001 Order at 21.)  
11 Because the Court did not grant Plaintiff further leave to add any additional parties or claims, the  
12 Court need not address the remaining claims in his amended complaint.

13 **III. Request for Injunctive Relief**

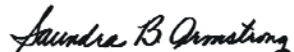
14 In his amended complaint, Plaintiff has also requested "urgent injunctive relief, with respect  
15 to all of his legal property that has been in the defendants [sic] direct control and possession since 6-  
16 25-2003, causing Plaintiff to suffer [actual and irreparable injuries]." (Am. Compl. at 44.) At the  
17 time he filed his amended complaint, Plaintiff was incarcerated at High Desert State Prison (HDSP),  
18 and he has since been transferred to Kern Valley State Prison (KVSP). Any claims regarding the  
19 conditions of his confinement at either HDSP or KVSP must be filed in the United States District  
20 Court for the Eastern District of California, because that is the district in which HDSP and KVSP are  
21 located. Accordingly, the request for injunctive relief is DENIED without prejudice to Plaintiff  
22 seeking such relief in the Eastern District.

23 **CONCLUSION**

24 For the foregoing reasons, the amended complaint is DISMISSED for failure to state a  
25 cognizable federal claim. The Clerk shall close the file and terminate all pending motions.

26 IT IS SO ORDERED.

27 DATED: 11/19/09

28   
SAUNDRA BROWN ARMSTRONG  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 HAMILTON,

5 Plaintiff,

6 v.

7 HERNANDEZ et al,

8 Defendant.

Case Number: CV02-05602 SBA

**CERTIFICATE OF SERVICE**

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
10 Court, Northern District of California.

11 That on November 20, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
14 located in the Clerk's office.

15 George Hamilton K-54885  
16 Kern Valley State Prison  
17 P.O. Box 5104  
18 Delano, CA 93216

19 Dated: November 20, 2009

Richard W. Wiekling, Clerk  
By: LISA R CLARK, Deputy Clerk